

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CIVIL ACTION NO. 3:09-CV-344-RJC  
(3:05-CR-227-RJC-DCK)**

<b>AVERY SHANDEL JAMES,</b>	)	
	)	
<b>Petitioner,</b>	)	
<b>v.</b>	)	<b><u>ORDER</u></b>
	)	
<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Respondent.</b>	)	

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**THIS MATTER IS BEFORE THE COURT** on Petitioner’s “Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence...” (Document No. 1) filed on August 10, 2009; “Government’s Motion For Summary Judgment” (Document No. 7), filed November 10, 2009; Petitioner’s Motion For Reconsideration (Document No. 17), filed January 21, 2010; Petitioner’s “Motion To Amend...” (Document No. 18), filed May 4, 2010; and Petitioner’s “Notice Of Inquiry And Motion For Free Transcripts For Purpose of 2255" (Document No. 19), filed May 24, 2010.

After consideration of the motions, the record and applicable authority, the undersigned will grant Petitioner’s motion to amend; deny Respondent’s motion for summary judgment, without prejudice; deny Petitioner’s motion for reconsideration; and grant Petitioner’s motion for free transcripts. The undersigned finds, particularly noting the procedural posture of this matter and the Petitioner’s *pro se* status, that justice and judicial economy favor allowing Petitioner to amend his § 2255 motion. The Court notes that the Government has not filed any opposition to the motion to amend. Under these circumstances, the undersigned will deny the Government’s motion for summary judgment, without prejudice to re-file after Petitioner’s amended motion to vacate or if Petitioner fails to timely amend.


Next, the undersigned has reviewed Petitioner's motion for reconsideration pursuant to Fed.R.Civ.P. 60(b)(1), and respectfully declines to allow that motion. Petitioner's argument in this motion is difficult to follow, it is however, clear enough that he has not sufficiently identified a "mistake" in the Court's denial of discovery, or other grounds for relief from the undersigned's "Order" (Document No. 14) pursuant to Fed.R.Civ.P. 60(b).

Finally, Petitioner seeks access to the transcript of certain portions of his trial that he contends he is missing; namely, opening and closing arguments and jury instructions. The undersigned observes that these portions of the requested record were previously requested by Petitioner's counsel (Case No. 3:05-cr-227-RJC-DCK, Document No. 46-1, p.2) and made available (Case No. 3:05-cr-227-RJC-DCK, Document No. 51) in that criminal matter. Nevertheless, the Court will make arrangements for the requested portions of the transcript to be delivered to Petitioner.

**IT IS, THEREFORE ORDERED** that:

1. "Government's Motion For Summary Judgment" (Document No. 7) is **DENIED**, without prejudice to re-file.
2. Petitioner's Motion For Reconsideration (Document No. 17) is **DENIED**.
3. Petitioner's "Motion To Amend..." (Document No. 18) is **GRANTED**. Petitioner may file an amended § 2255 motion within 60 days from the date of entry of this Order. Further extensions of time in this matter are unlikely, barring extraordinary circumstances.
4. Petitioner's "Notice Of Inquiry And Motion For Free Transcripts For Purpose of 2255" (Document No. 19) is **GRANTED**. The Clerk of Court is directed to send Petitioner the requested portions of his trial transcript found in Case No. 3:05-cr-227-RJC-DCK, Document No. 51.

Signed: February 24, 2011

  
Robert J. Conrad, Jr.  
Chief United States District Judge

